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18 SiFi Networks Fullerton LLC

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 SOUTHERN DIVISION

22 SIFI NETWORKS FULLERTON, LLC,

23 Plaintiff,

24 v.

25 BERKSHIRE HATHAWAY
26 SPECIALTY INSURANCE
27 COMPANY,

28 Defendant.

Civil Action No. 8:23-cv-1417

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

29 Plaintiff SiFi Networks Fullerton, LLC (“SiFi Networks Fullerton”) files this
30 Complaint seeking monetary and declaratory judgment relief against Defendant
31 Berkshire Hathaway Specialty Insurance Company (“Berkshire Hathaway”), relating
32 to Berkshire Hathaway’s breaches of its obligations to SiFi Networks Fullerton as a
33 surety under the performance and payment bond agreements attached here as

1 **Exhibits 1 and 2.** In support, SiFi Networks Fullerton alleges on its own knowledge
2 or upon information and belief as to other matters as follows:

3 **NATURE OF THE ACTION**

4 1. SiFi Networks Fullerton seeks monetary and declaratory judgment relief
5 arising from Berkshire Hathaway's breaches of its obligations to SiFi Networks
6 Fullerton as a surety under the performance and payment bond agreements. SiFi
7 Networks Fullerton has already suffered significant damages and continues to do so,
8 and expects to incur additional significant harm likely well in excess of \$17 million,
9 as set forth below.

10 2. In 2018, SiFi Networks Fullerton contracted with Corbel
11 Communications Industries LLC ("Corbel") to provide certain engineering,
12 procurement, and construction services in connection with the development of a
13 citywide fiber-to-the-home ("FTTH") network in the City of Fullerton, California,
14 through a process known as microtrenching (the "Project").

15 3. Microtrenching generally involves digging a narrow trench along
16 existing roadways in order to deploy cables to support fiber optic networks. Corbel
17 represented that it was one of the specific companies in the industry that specialize
18 in microtrenching, and that it was capable of performing the applicable work.

19 4. In connection with this Project, Berkshire Hathaway issued a
20 performance bond and a payment bond on behalf of Corbel as principal, in favor of
21 SiFi Networks Fullerton. Through the bonds, Berkshire Hathaway guaranteed
22 Corbel's performance and payment obligations.

23 5. Unfortunately for SiFi Networks Fullerton, Corbel fell short of its
24 representations and agreements. Corbel's struggles began from the outset, taking six
25 months to obtain its first permit from the City of Fullerton to begin construction.
26 Permitting was *solely* Corbel's responsibility under the parties' agreement. Even
27 once it began construction, Corbel struggled to properly complete its scope of work.
28 Defective work, poor productivity, and safety incidents plagued Corbel's

1 performance even as its continued permitting struggles led the Project to fall further
2 behind schedule.

3 6. Despite these deficiencies, SiFi Networks Fullerton worked with Corbel
4 to try to get the Project back on track. SiFi Networks Fullerton pushed Corbel to
5 develop better quality control plans and improve its performance. It also listened to
6 proposals from Corbel in the summer of 2021 on how it would ensure completion of
7 the work and finish the Fullerton Project o'n the same terms. SiFi Networks
8 Fullerton's good faith interest in listening to such proposals was in seeing Corbel
9 complete the work it agreed to perform at the price it agreed to do so.

10 7. That performance did not happen. Regardless of SiFi Networks
11 Fullerton's efforts, Corbel's operations did not improve, and it became non-
12 responsive at the end of 2021 even as SiFi Networks Fullerton continued to alert
13 Corbel of outstanding problems that needed to be fixed.

14 8. Accordingly, pursuant to Section 3.1 of the performance bond that
15 Corbel obtained in connection with the Project, bond owner SiFi Networks Fullerton
16 notified Corbel's surety, Berkshire Hathaway, in December 2021 that it was
17 considering declaring a Contractor Default. **Ex. 1**, Performance Bond § 3.1.

18 9. After a conference requested by Berkshire Hathaway and attended by
19 SiFi Networks Fullerton led to no change, SiFi Networks Fullerton declared a
20 Contractor Default pursuant to the performance bond's terms and terminated Corbel
21 in February 2022.

22 10. SiFi Networks Fullerton then cooperated in a months-long investigation
23 by Berkshire Hathaway into its performance bond claims, including responding to
24 multiple rounds of requests for information and cooperating with a consultant
25 Berkshire Hathaway hired to examine Corbel's performance. As part of that process,
26 Berkshire Hathaway expressly waived its right to self-perform Corbel's remaining
27 work and agreed to SiFi Networks Fullerton hiring two replacement contractors to
28 finish what Corbel started.

1 11. Despite these efforts, Berkshire Hathaway denied liability, which was
2 done *seven months* after SiFi Networks Fullerton made its claim on the bond and
3 after approving the replacement contractors. Tellingly, Berkshire Hathaway made
4 no attempt to defend Corbel's performance in denying liability. Instead, Berkshire
5 Hathaway alleged a purported scheme involving one of Corbel's former executives
6 forming a new company that was to acquire Corbel's assets with the help of a private
7 equity firm.

8 12. However, Berkshire Hathaway has not pointed to any involvement in
9 this scheme by SiFi Networks Fullerton—nor would it make any sense, as the
10 supposed scheme offered no economic advantage to SiFi Networks Fullerton.

11 13. There is no reasonable dispute that Corbel fell far short of its
12 commitments and failed to perform as required under the agreements with SiFi
13 Networks Fullerton. As a direct result of these failures, SiFi Networks Fullerton was
14 damaged in an amount in excess of \$17 million, *which continues to accrue*.

15 14. Once Berkshire Hathaway's obligations were triggered, its options
16 under Section 5 of the performance bond were to: (1) arrange for Corbel to complete
17 the work (with SiFi Networks Fullerton's consent); (2) complete the work itself;
18 (3) work with SiFi Networks Fullerton to obtain a replacement contractor; or,
19 alternatively, waive those rights and either (4) pay SiFi Networks Fullerton any
20 amounts for which Berkshire Hathaway is liable or (5) deny liability in whole or in
21 part, "citing the reasons for denial." *Id.* § 5.

22 15. Despite Berkshire Hathaway's unambiguous obligations as a surety
23 under the performance bond after being notified by SiFi Networks Fullerton of the
24 Contractor Default, Berkshire Hathaway refused to comply with its obligations under
25 the performance bond.

26 16. Further, SiFi Networks Fullerton was served and forced to defend a
27 complaint naming it as a defendant by one of Corbel's equipment suppliers, Trinity
28

1 Equipment, Inc. (“Trinity”), in March of 2023. Trinity sought to foreclose on its
2 mechanic’s lien to recover claimed equipment Trinity supplied to Corbel.

3 17. Section 3 of the payment bond agreement obligated Berkshire
4 Hathaway to tender a defense after the bond owner (SiFi Networks Fullerton) notified
5 the contractor and surety of claims against the owner by “any person or entity seeking
6 payment for labor, materials, or equipment furnished for use in the performance of
7 the Construction Contract.” **Ex. 2**, Payment Bond, § 3. SiFi Networks Fullerton
8 fulfilled its obligation by notifying Corbel and Berkshire Hathaway of Trinity’s
9 claim. Berkshire Hathaway failed to tender a defense as required under the payment
10 bond’s terms.

11 18. Therefore, SiFi Networks Fullerton seeks monetary and declaratory
12 relief from the Court arising out of Berkshire Hathaway’s obligations under the
13 performance bond to pay SiFi Networks Fullerton for any losses it incurs as a result
14 of damages suffered in excess of the contract price balance owing to Corbel at the
15 time of the default and termination. SiFi Networks Fullerton seeks further monetary
16 and declaratory relief from the Court arising out of Berkshire Hathaway’s obligations
17 under the payment bond to tender a defense and, if applicable, indemnity for claims
18 against SiFi Networks Fullerton under the contract. Additionally, SiFi Networks
19 Fullerton is entitled to damages for Berkshire Hathaway’s breaches of the implied
20 covenant of good faith and fair dealing, as set forth in this Complaint.

21 **PARTIES**

22 19. Plaintiff SiFi Networks Fullerton, LLC is a Delaware limited liability
23 company with its principal place of business in Fullerton, California. Its principal
24 place of business is located at 680 Langsdorf Drive, Fullerton, California 92831.

25 20. Defendant Berkshire Hathaway Specialty Insurance Company is a
26 Nebraska corporation. Upon information and belief, its principal place of business
27 is in Omaha, Nebraska, at the address of 1314 Douglas Street, Suite 1400, Omaha,
28 Nebraska 68102. It can be served through its registered agent CSC-Lawyers

1 Incorporating Service Company, located at 233 South 13th Street, Suite 1900,
2 Lincoln, Nebraska 68508.

3 **JURISDICTION AND VENUE**

4 21. This Court has subject matter jurisdiction over this action pursuant to 28
5 U.S.C. § 1332, because there is complete diversity of citizenship between SiFi
6 Networks Fullerton and Berkshire Hathaway. Further, SiFi Networks Fullerton to
7 date has suffered substantial losses in an amount far greater than \$75,000, and those
8 losses are increasing daily.

9 22. This Court has personal jurisdiction over Berkshire Hathaway, as it has
10 purposefully availed itself of the privilege of doing business in California related to
11 the contracts at issue in this lawsuit. Berkshire Hathaway's substantial contacts with
12 California through its business in the state, involvement in the claims at issue in the
13 City of Fullerton, and consent to suit in this forum make it such that Berkshire
14 Hathaway could reasonably anticipate being hailed into this Court.

15 23. In fact, personal jurisdiction is appropriate over Berkshire Hathaway
16 pursuant to both the performance and payment bonds. Under the performance bond,
17 the parties agreed that "[a]ny proceeding, legal or equitable, under this Bond may be
18 instituted in any court of competent jurisdiction in the location in which the work or
19 part of the work is located...." **Ex. 1**, Performance Bond, § 11. Under the payment
20 bond, the parties agreed that "[n]o suit or action shall be commenced by a Claimant
21 under this Bond other than in a court of competent jurisdiction in the state in which
22 the project that is the subject of the Construction Contract is located...." **Ex. 2**,
23 Payment Bond, § 12. Both bonds describe the Project as the "[f]inal design,
24 engineering, and construction of fiber to the home ("FTTH") deployment in the City
25 of Fullerton, CA...." **Ex. 1**, Performance Bond at 1; **Ex. 2**, Payment Bond at 5.

26 24. Therefore, the parties agreed that any dispute over the bond
27 agreements shall occur in a court of competent jurisdiction in the state in which the
28 Project is located. Venue is appropriate in this judicial district and division pursuant

1 to 28 U.S.C. § 1391(b)(2). A substantial part of the events or actions that give rise
2 to these claims occurred within this judicial district and division. As the Project is
3 located in Fullerton, California, this Court is the appropriate forum and venue, as
4 consented to by Berkshire Hathaway.

5 **FACTUAL BACKGROUND**

6 **A. SiFi Networks Fullerton Contracts with Corbel for Services.**

7 25. SiFi Networks Fullerton's business is to fund, build, and operate an open
8 access fiber network in Fullerton, California. There was a development agreement
9 executed with the City of Fullerton in 2014. The city has no control, ownership or
10 investment in any aspect of the network or its operation. The infrastructure from the
11 backhaul, to the mainline, to the residential gateway at the premise is 100% privately
12 financed, operated and maintained by SiFi Networks Fullerton and assisted by its
13 project contractors.

14 26. One of those contractors was Corbel. Corbel represented that it was one
15 of a handful of companies that specialize in the practice of microtrenching for the
16 installation of fiber networks. Prior to the Fullerton Project, Corbel represented that
17 it had a solid reputation in a highly specialized field, such that SiFi Networks
18 Fullerton reasonably relied on such representations and believed that Corbel was the
19 right contractor for the Project.

20 27. In 2018, a Framework Master Agreement ("FMA") was executed, under
21 which Corbel would provide engineering, procurement, and construction services
22 pursuant to individually executed work orders for project companies in their
23 respective municipal projects.

24 28. The FMA was incorporated into the Work Order for the Fullerton FTTH
25 Project executed between Corbel and SiFi Networks Fullerton on March 6, 2019.
26 Under the Work Order, Corbel was obligated to provide professional engineering,
27 consulting, and development services for this Project, as well as procurement
28

1 services, permit obligations, supervision, materials, equipment, machinery, tools,
2 labor, supplies and all other services required to complete the Project in full.

3 29. Critically, it was **solely** Corbel's responsibility to obtain and pay for any
4 necessary permits required for the Project.

5 30. The permitting and scope of work for the Fullerton Project was divided
6 into 20 Work Zones. To achieve substantial completion of the work, Corbel was,
7 among other things, to complete the design, permitting and installation for all 20
8 Work Zones.

9 31. Corbel was also obligated to achieve completion of the final design,
10 which required performing design services to SiFi Networks Fullerton's satisfaction,
11 providing SiFi Networks Fullerton with an affidavit confirming that
12 engineers/consultants had been paid in full, and providing final lien waivers. Corbel
13 was additionally obligated to achieve completion of the final site, which required
14 fully and properly performing all work to SiFi Networks Fullerton's satisfaction,
15 training SiFi Networks Fullerton's personnel in the operation of the Project,
16 furnishing contractually specified documents, submitting a final accounting for the
17 work, and providing authorizations, consents and approvals required by the City of
18 Fullerton, among other requirements.

19 32. Corbel was required to achieve substantial completion of work no later
20 than April 11, 2021, and to achieve completion of the final site no later than July 11,
21 2021. Completion of the final site required approval from Arcadis, SiFi Networks
22 Fullerton's designated owner representative, and the City of Fullerton.

23 33. Corbel was required to advise SiFi Networks Fullerton immediately of
24 any problems that may cause a delay or cost issue as to completion of the Project.

25 34. Corbel was to complete its scope of work for a fixed lump-sum price of
26 \$30,255,961.08, as the sole compensation for its work. Only SiFi Networks Fullerton
27 could direct a change in the scope of the work performed by Corbel.
28

1 35. Corbel was further required to submit a request for a change order if
2 needed, and was also required to take reasonable steps to mitigate the impact of any
3 such action, including delay, that may lead to a change event, with the goal of
4 resuming execution of the Project as soon as possible.

5 36. Corbel represented, warranted and guaranteed to SiFi Networks
6 Fullerton that, among other specific agreements in the contract, its work would be
7 performed free from defects, in a good and workmanlike manner, and in compliance
8 with the Work Order and other contract documents.

9 37. Given Corbel's represented reputation in the industry and its
10 performance in prior projects for others, SiFi Networks Fullerton had no reason to
11 doubt these warranties. Corbel also agreed that it would remediate defective work at
12 its sole cost.

13 **B. Corbel Secures Bonds From Berkshire Hathaway.**

14 38. As required by the Work Order, Corbel secured both a payment bond
15 and a performance bond from Berkshire Hathaway.

16 39. The performance bond and payment bond both use AIA Document
17 A312-2010, and cover the full amount of the \$30,255,961.08 lump-sum payment.

18 40. Berkshire Hathaway's obligations pursuant to the performance bond
19 arise in the event that SiFi Networks Fullerton: (1) notifies Berkshire Hathaway and
20 Corbel that it is considering declaring a Contractor Default; (2) declares a Contractor
21 Default and terminates the contract, with notice to Berkshire Hathaway; and
22 (3) agrees to pay the balance of the contract price to Berkshire Hathaway or a
23 replacement contractor. **Ex. 1**, Performance Bond, § 3.

24 41. The performance bond further provides that late or improper notice to
25 Berkshire Hathaway "shall not constitute a failure to comply with a condition
26 precedent to [Berkshire Hathaway]'s obligations, or release [Berkshire Hathaway]
27 from its obligations, except to the extent [Berkshire Hathaway] demonstrates actual
28 prejudice." *Id.* § 4.

1 42. Further, Berkshire Hathaway waives “notice of any change, including
2 changes of time, to the Construction Contract or to related subcontracts, purchase
3 orders and other obligations.” *Id.* § 10.

4 **C. Corbel Fails to Perform.**

5 43. Corbel ultimately failed to perform on the Fullerton Project, and was
6 deficient in nearly all respects of nonperformance, from failures to obtain permits, to
7 poor productivity, to repeated safety problems.

8 44. In the roughly thirty-three months Corbel spent on the Project between
9 the issuance of the Notice to Proceed in April 2019 and its termination in February
10 2022, Corbel obtained approval of its design and building permits to proceed with
11 construction in only seven of the 20 designated Work Zones, with the last approval
12 in January 2021.

13 45. Corbel failed to achieve either “Work Substantial Completion” or “Final
14 Site Completion” by the required deadlines of April 11, 2021, and July 11, 2021,
15 respectively. By means of example of one of these failures only, at the time of
16 Corbel’s termination, it had completed 16% of the serviceable addresses within the
17 City of Fullerton required to be accessed by Developer’s FTTH system under the
18 Work Order Contract Documents. This equated to 9,029 addresses of the required
19 55,146 total serviceable addresses.

20 46. Corbel completed its microtrenching work in only two of the seven
21 Work Zones in which it obtained permits to proceed with construction, but even in
22 those Zones Corbel failed to obtain close out approval/certification from the City of
23 Fullerton.

24 47. Even where Corbel minimally performed its scope, it repeatedly
25 delivered defective, noncompliant and substandard work, contrary to its obligations
26 under the contract. During the 2021 calendar year alone, SiFi Networks Fullerton,
27 through its representative, Arcadis, notified Corbel of 716 instances of defective
28 work and other performance deficiencies under the scope of work.

1 48. Of those 716 instances, nearly half (352) involved significant defective
2 work issues that took Corbel an average of 25 days to resolve. Further, while Corbel
3 worked with SiFi Networks Fullerton over the course of 2021 to try to remedy many
4 of these issues, 87 remained entirely unresolved at the time Corbel was terminated.
5 Corbel's failure to timely perform corrections of defective work as required is another
6 breach of its agreements with SiFi Networks Fullerton.

7 49. As a result, most of Corbel's onsite operations after June 2021 were
8 focused on remediating defective and non-compliant work issues rather than laying
9 new trenches. By June 2021, as a result of these deficiencies, SiFi Networks
10 Fullerton had not been able to add any serviceable addresses to the network since
11 October 2020.

12 50. Corbel's deficient performance also led to repeated safety incidents
13 caused by its personnel, primarily during its microtrenching operations. Corbel's
14 construction operations in 2021 caused, in whole or in part, 38 separate incidents of
15 striking and damaging telecom/TV fiber lines, electrical lines, gas lines, water lines,
16 traffic signal lines, and other equipment. These incidents necessitated appropriate
17 stop work orders and corrective work notices to Corbel to repair the damaged
18 property.

19 51. In fact, Corbel voluntarily underwent training in May 2021 to retrain its
20 personnel—and SiFi Networks Fullerton relied on Corbel's representation that the
21 training would result in improved safety performance. Yet, Corbel had seven more
22 striking incidents in June, July, and August after restarting operations.

23 52. Corbel additionally failed, among other things, to (1) timely pay its
24 subcontractors, material and/or equipment suppliers, and vendors for work, labor
25 and/or materials furnished to or incorporated in the Fullerton Project; (2) provide that
26 each such item of the work and thereby the Fullerton Project be free and clear of all
27 liens, claims, security interests, or encumbrances; (3) defend, indemnify and hold
28 SiFi Networks Fullerton harmless regarding such claims or liens for unpaid work,

1 labor and/or materials by such subcontractors, material and/or equipment suppliers
2 and vendors of any tier, as required by the Work Order; and (4) properly obtain and
3 maintain all required licenses and permits.

4 53. Each of these breaches of the agreements between Corbel and SiFi
5 Networks Fullerton are material, and amount to a Contractor Default under the terms
6 of the governing Work Order.

7 **D. SiFi Networks Fullerton Terminates Corbel for Default.**

8 54. SiFi Networks Fullerton continuously worked with Corbel to avoid a
9 costly default and termination. SiFi Networks Fullerton, including through its
10 representative, Arcadis, consistently pushed Corbel to develop better quality control
11 plans and improve its performance. As a result, Corbel committed to improving its
12 work on numerous occasions and in numerous ways, including as noted above on
13 additional safety training, increasing productivity with additional crews, and
14 performing its obligations.

15 55. SiFi Networks Fullerton even listened to Corbel's proposals on
16 additional financing and partners so Corbel could complete its work. These
17 discussions were initiated by Corbel's CEO, included representations that Berkshire
18 Hathaway was involved in the process, did not release or excuse Corbel from
19 performance, and ultimately did not go through or alter Corbel's performance
20 obligations. SiFi Networks Fullerton understood these discussions to be a
21 collaborative process including Berkshire Hathaway within the framework of the
22 existing agreements.

23 56. However, despite all of the representations and promises for
24 improvement by Corbel, through taking on a partner or otherwise, Corbel's deficient
25 performance continued.

26 57. SiFi Networks Fullerton, through Arcadis, sent Corbel another letter
27 dated November 10, 2021, that detailed outstanding issues requiring corrective action
28 by Corbel, many of which had been pending for months. After receiving no response

1 from Corbel, and in light of Corbel's continued failure to improve its performance,
2 SiFi Networks Fullerton had no choice but to consider declaring a Contractor Default
3 and terminating Corbel to protect its rights.

4 58. Accordingly, consistent with the performance bond, SiFi Networks
5 Fullerton sent notice to Corbel and Berkshire Hathaway on December 28, 2021 that
6 it was considering declaring a Contractor Default.

7 59. In response, Berkshire Hathaway requested a conference to discuss
8 Corbel's performance, which took place virtually on January 7, 2022. Neither during
9 nor after that conference did Berkshire Hathaway or Corbel propose for Corbel to
10 complete the work as promised.

11 60. On February 15, 2022, SiFi Networks Fullerton sent another letter to
12 Corbel regarding outstanding work. This letter too went unanswered.

13 61. SiFi Networks Fullerton declared a Contractor Default and terminated
14 Corbel on February 24, 2022, with notice to Berkshire Hathaway provided
15 simultaneously, pursuant to Section 3.2 of the performance bond.

16 **E. Berkshire Hathaway Breaches Its Obligations.**

17 62. Once Berkshire Hathaway's obligations under the bond were triggered
18 by SiFi Networks Fullerton declaring a Contractor Default, its options were to:
19 (1) arrange for Corbel to complete the work (with SiFi Networks Fullerton's
20 consent); (2) complete the work itself; (3) work with SiFi Networks Fullerton to
21 obtain a replacement contractor; or, alternatively, waive those rights and either
22 (4) pay SiFi Networks Fullerton any amounts for which Berkshire Hathaway is liable
23 or (5) deny liability in whole or in part, "citing the reasons for denial." *Id.* § 5.

24 63. Berkshire Hathaway instead chose to breach its obligations and its duties
25 of good faith and fair dealing.

26 64. Despite its initial obligation under the performance bond to proceed
27 "promptly" following notice of Corbel's default and termination, Berkshire
28 Hathaway investigated SiFi Networks Fullerton's claim for seven months. *Id.*

1 65. During that time, Berkshire Hathaway retained Rodney Tompkins of
2 RJT Construction, Inc. as a consultant and to assist in its investigation. And,
3 Berkshire Hathaway remained actively involved in the process of replacing Corbel
4 with new contractors to complete Corbel's unfinished scope of work. On July 29,
5 2022, Berkshire Hathaway consented to SiFi Networks Fullerton engaging Pramira,
6 Inc. and Lat Long Infrastructures LLC ("Lat Long") to finish Corbel's work.

7 66. Despite Berkshire Hathaway's deep understanding of the nature of
8 Corbel's failures, its own responsibilities under the bond, and the need for
9 replacement contractors to complete the work, Berkshire Hathaway denied liability
10 in a letter dated September 26, 2022.

11 67. Berkshire Hathaway's denial letter offered no defense to the charge that
12 Corbel failed to perform its obligations under the contract despite its months-long
13 investigation of Corbel's performance.

14 68. Instead, the denial letter parroted allegations of wrongdoing by Lat Long
15 and others that appear to have come from Corbel's principal. Berkshire Hathaway
16 failed to point to any alleged conduct by SiFi Networks Fullerton in making these
17 unsubstantiated allegations that also make no economic sense. These actions by
18 Berkshire Hathaway, among others, are a separate and independent breach of its
19 duties owed to SiFi Networks Fullerton.

20 69. Berkshire Hathaway is bound by clear and express obligations under the
21 performance bond to pay SiFi Networks Fullerton for any losses it incurs as a result
22 of damages suffered in excess of the contract price balance owing to Corbel at the
23 time of the default and termination, including, among other things, legal, delay, and
24 disruption damages caused by Corbel's default and Berkshire Hathaway's wrongful
25 denial of liability under the bond. The damages include, but are not limited to, all
26 allowable direct, incidental, and other damages (which may include special,
27 consequential, or indirect damages), as determined by the trier of fact.
28

1 70. Berkshire Hathaway failed to fulfill *any* of its obligations under these
2 bond agreements, and has done so in breach of its duties of good faith and fair
3 dealing. SiFi Networks Fullerton's damages as a result of these failures continue to
4 increase and are a direct result of Berkshire Hathaway's misconduct and breaches.

5 **F. Berkshire Hathaway Fails To Tender a Defense.**

6 71. On March 2, 2023, SiFi Networks Fullerton was served and forced to
7 defend a complaint naming it as a defendant by one of Corbel's equipment suppliers,
8 Trinity. Trinity sought to foreclose on its mechanic's lien to recover claimed
9 equipment Trinity supplied to Corbel.

10 72. Section 3 of the payment bond requires SiFi Networks Fullerton to
11 provide prompt notice to Corbel and Berkshire Hathaway of claims, demands, liens
12 or suits against SiFi Networks Fullerton by any person or entity seeking payment for
13 "labor, materials, or equipment furnished for use in the performance of the
14 Construction Contract...." **Ex. 2**, Payment Bond, § 3.

15 73. SiFi Networks Fullerton complied in full with this notice requirement,
16 providing appropriate notice to Corbel and Berkshire Hathaway of Trinity's claim by
17 letter on March 24, 2023.

18 74. Once Berkshire Hathaway's obligations under the bond were triggered
19 by SiFi Networks Fullerton notifying the surety of the claim, Berkshire Hathaway
20 was required to tender a defense of this claim to SiFi Networks Fullerton. *Id.*

21 75. Berkshire Hathaway did no such thing. On April 3, 2023, Berkshire
22 Hathaway notified SiFi Networks Fullerton of its failure to tender a defense, despite
23 an unambiguous obligation under the payment bond to do so.

24 76. Berkshire Hathaway, under the payment bond, is liable to SiFi Networks
25 Fullerton for any damages incurred in litigating the claim by Trinity, including in
26 defense and, if applicable, indemnity. This includes, but is not limited to, all
27 allowable direct, incidental, and other damages (which may include special,
28 consequential, or indirect damages), as determined by the trier of fact.

77. The damages for both the payment bond and performance bond breaches include “additional legal, design professional and delay costs resulting from the Contractor’s Default, and resulting from the actions or failure to act of the Surety under Section 5” of the performance bond, “reasonable attorney’s fees the Claimant incurs” under Section 7.3 of the payment bond, and costs owed to SiFi Networks Fullerton pursuant to Federal Rule of Civil Procedure 54(d). **Ex. 1**, Performance Bond § 7.2; **Ex. 2**, Payment Bond § 7.3.

78. Pursuant to Section 7.3 of the performance bond, as well as Section 11 of the Work Order, liquidated damages are also owed to SiFi Networks Fullerton by Berkshire Hathaway.

CLAIMS FOR RELIEF

COUNT I

DECLARATORY RELIEF

79. SiFi Networks Fullerton repeats, realleges, and incorporates by reference the above allegations as if fully set forth herein.

80. Section 5 of the performance bond expressly and unambiguously provides that that upon notice of a Contractor Default by SiFi Networks Fullerton, Berkshire Hathaway must (1) arrange for Corbel to complete the work (with SiFi Networks Fullerton's consent); (2) complete the work itself; (3) work with SiFi Networks Fullerton to obtain a replacement contractor; or, alternatively, waive those rights and either (4) pay SiFi Networks Fullerton any amounts for which Berkshire Hathaway is liable or (5) deny liability in whole or in part, "citing the reasons for denial." **Ex. 1**, Performance Bond, § 5.

81. SiFi Networks Fullerton declared a Contractor Default on February 24, 2022, appropriately notifying Berkshire Hathaway the same day of Corbel's termination.

82. Berkshire Hathaway denied liability under the performance bond despite SiFi Networks Fullerton's satisfaction of its obligations, and has failed to pay

1 SiFi Networks Fullerton for any losses it incurs as a result of damages suffered in
2 excess of the contract price balance owing to Corbel at the time of the default and
3 termination, pursuant to Section 5 of the performance bond.

4 83. Section 3 of the payment bond expressly and unambiguously provides
5 that Berkshire Hathaway agreed to tender a defense upon notice from SiFi Networks
6 Fullerton of a claim against SiFi Networks Fullerton by “any person or entity seeking
7 payment for labor, materials, or equipment furnished for use in the performance of
8 the Construction Contract.” **Ex. 2**, Payment Bond, § 3.

9 84. SiFi Networks Fullerton notified both Corbel and Berkshire Hathaway
10 of Trinity’s claim on March 24, 2023, as required pursuant to Section 3.

11 85. Berkshire Hathaway refused to tender a defense to SiFi Networks
12 Fullerton for Trinity’s claim despite SiFi Networks Fullerton’s satisfaction of its
13 obligations under the payment bond.

14 86. Berkshire Hathaway’s actions have harmed SiFi Networks Fullerton by
15 causing SiFi Networks Fullerton to incur damages associated both with the failure of
16 Berkshire Hathaway to assume liability for Corbel’s default and termination under
17 the performance bond, and the failure of Berkshire Hathaway to tender a defense of
18 Trinity’s claim to SiFi Networks Fullerton under the payment bond.

19 87. Accordingly, SiFi Networks Fullerton seeks a declaration that Berkshire
20 Hathaway is obligated to pay SiFi Networks Fullerton for its losses incurred as a
21 result of damages suffered in excess of the contract price balance owing to Corbel at
22 the time of the default and termination, and further, that Berkshire Hathaway must
23 tender a defense and, if applicable, indemnity of Trinity’s claim to SiFi Networks
24 Fullerton.

25 **COUNT II**

26 **BREACH OF CONTRACT – PERFORMANCE BOND**

27 88. SiFi Networks Fullerton repeats, realleges, and incorporates by
28 reference the above allegations as if fully set forth herein.

1 89. The performance bond is a valid and enforceable contract between SiFi
2 Networks Fullerton and Berkshire Hathaway.

3 90. Under the performance bond, Berkshire Hathaway expressly agreed that
4 upon notice of a Contractor Default by SiFi Networks Fullerton, it would (1) arrange
5 for Corbel to complete the work (with SiFi Networks Fullerton's consent);
6 (2) complete the work itself; (3) work with SiFi Networks Fullerton to obtain a
7 replacement contractor; or, alternatively, waive those rights and either (4) pay SiFi
8 Networks Fullerton any amounts for which Berkshire Hathaway is liable or (5) deny
9 liability in whole or in part, "citing the reasons for denial." **Ex. 1, Performance Bond,**
10 § 5.

11 91. SiFi Networks Fullerton has fully complied with its obligations under
12 the bond. SiFi Networks Fullerton notified both Corbel and Berkshire Hathaway on
13 December 28, 2021 that it was considering declaring a Contractor Default. It
14 attended the conference requested by Berkshire Hathaway as required under the
15 bond.

16 92. SiFi Networks Fullerton then declared a Contractor Default on
17 February 24, 2022, appropriately notifying Berkshire Hathaway the same day of
18 Corbel's termination.

19 93. SiFi Networks Fullerton agreed to pay the balance of the contract price
20 to replacement contractors, and Berkshire Hathaway expressly consented to the
21 hiring of other contractors to finish Corbel's scope of work. All conditions precedent
22 under the performance bond have been met by SiFi Networks Fullerton.

23 94. Despite the unambiguous terms of the performance bond and SiFi
24 Networks Fullerton's compliance with its obligations as the owner of the bond,
25 Berkshire Hathaway denied liability under the bond in full. Berkshire Hathaway
26 likewise failed to adequately investigate SiFi Networks Fullerton's claim under the
27 performance bond before denying liability.
28

1 95. This denial of liability was a breach of Berkshire Hathaway's
2 obligations under the performance bond.

3 96. Once Berkshire Hathaway denied liability under the performance bond
4 after SiFi Networks Fullerton provided appropriate notice of a Contractor Default,
5 SiFi Networks Fullerton is entitled to enforce any remedy available to it "without
6 further notice." *Id.* § 6.

7 97. Berkshire Hathaway's breach of its obligations caused and will continue
8 to cause substantial damages to SiFi Networks Fullerton, and have materially and
9 adversely affected SiFi Networks Fullerton's ability to complete the Fullerton
10 Project.

11 98. SiFi Networks Fullerton seeks all damages incurred, expected to be
12 incurred, or recoverable under applicable law in connection with Berkshire
13 Hathaway's breach of its obligations under the performance bond. This includes, but
14 is not limited to, all allowable direct, incidental, and other damages (which may
15 include special, consequential, or indirect damages), as determined by the trier of
16 fact.

17 99. These damages include "additional legal, design professional and delay
18 costs resulting from the Contractor's Default, and resulting from the actions or failure
19 to act of the Surety under Section 5" of the performance bond, as well as costs owed
20 to SiFi Networks Fullerton pursuant to Federal Rule of Civil Procedure 54(d). **Ex. 1,**
21 **Performance Bond § 7.2.**

22 100. Pursuant to Section 7.3 of the performance bond, as well as Section 11
23 of the Work Order, liquidated damages are also owed to SiFi Networks Fullerton by
24 Berkshire Hathaway.

25 101. Further, SiFi Networks Fullerton has been required to retain the services
26 of counsel to prosecute this action. SiFi Networks Fullerton is entitled to recover its
27 reasonable attorneys' fees under the applicable agreements, rules, and statutes.
28

COUNT III

BREACH OF CONTRACT – PAYMENT BOND

102. SiFi Networks Fullerton repeats, realleges, and incorporates by reference the above allegations as if fully set forth herein

103. The payment bond is a valid and enforceable contract between SiFi Networks Fullerton and Berkshire Hathaway.

104. Under the payment bond, Berkshire Hathaway expressly agreed to tender a defense upon notice from SiFi Networks Fullerton of a claim against SiFi Networks Fullerton by “any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract.” **Ex. 2**, Payment Bond, § 3.

105. Once Berkshire Hathaway’s obligations under the bond were triggered by SiFi Networks Fullerton notifying the surety of the claim by Trinity for equipment against SiFi Networks Fullerton, Berkshire Hathaway was required to tender a defense of this claim to SiFi Networks Fullerton.

106. SiFi Networks Fullerton fully complied with its obligations under the payment bond. SiFi Networks Fullerton notified both Corbel and Berkshire Hathaway of Trinity’s claim on March 24, 2023, as required pursuant to Section 3. All conditions precedent under the payment bond are met by SiFi Networks Fullerton.

107. Despite the unambiguous terms of the payment bond and SiFi Networks Fullerton’s compliance with its obligations as the owner of the bond, on April 3, 2023, Berkshire Hathaway refused to tender a defense to SiFi Networks Fullerton under the bond. Berkshire Hathaway likewise failed to adequately investigate Trinity’s equipment claim against SiFi Networks Fullerton before refusing to tender a defense.

108. Failure to tender a defense was in breach of Berkshire Hathaway’s obligations under the payment bond.

109. This breach has caused and will continue to cause substantial additional damages to SiFi Networks Fullerton.

110. SiFi Networks Fullerton seeks all damages incurred, expected to be incurred, or recoverable under applicable law in connection with Berkshire Hathaway's breach of its obligations under the payment bond including in defense and, if applicable, indemnity. This includes, but is not limited to, all allowable direct, incidental, and other damages (which may include special, consequential, or indirect damages), as determined by the trier of fact, as well as costs owed to SiFi Networks Fullerton pursuant to Federal Rule of Civil Procedure 54(d).

111. Further, SiFi Networks Fullerton has been required to retain the services of counsel to prosecute this action. SiFi Networks Fullerton is entitled to recover its reasonable attorneys' fees under the applicable agreements, rules, and statutes.

COUNT IV

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

112. SiFi Networks Fullerton repeats, realleges, and incorporates by reference the above allegations as if fully set forth herein.

113. SiFi Networks Fullerton and Berkshire Hathaway entered into both performance and payment bond agreements, pursuant to obligations under the Project.

114. SiFi Networks Fullerton fully complied with its obligations to Berkshire Hathaway under both the performance and payment bond agreements, meeting all conditions precedent. SiFi Networks Fullerton gave proper notice and declared a Contractor Default when Corbel failed to perform. It attended the conference as requested by Berkshire Hathaway under the bond, and cooperated in full with Berkshire Hathaway's seven-month investigation of SiFi Networks Fullerton's claim.

1 115. Berkshire Hathaway was thus obligated to pay SiFi Networks Fullerton
2 under the bond, as it committed to do if Corbel committed a Contractor Default,
3 which occurred in numerous ways.

4 116. During the prolonged investigation, Berkshire Hathaway further
5 negotiated with SiFi Networks Fullerton and Corbel about hiring replacement
6 contractors to finish work on the Fullerton Project. SiFi Networks Fullerton believed
7 it was working alongside Berkshire Hathaway to resolve Corbel's deficiencies and
8 ensure completion of the Project.

9 117. Berkshire Hathaway then denied liability of SiFi Networks Fullerton's
10 claim under the performance bond, following months of supposed cooperation
11 between the parties to find a solution to continue the Project.

12 118. In denying liability after stringing SiFi Networks Fullerton along
13 through a long purported investigation and seemingly productive negotiations
14 regarding replacement contractors, Berkshire Hathaway acted unfairly and without
15 regard for its duty of good faith and fair dealing. Further, each of the breaches
16 identified above likewise serve as separate and independent bases for breaches of
17 Berkshire Hathaway's duty of good faith and fair dealing.

18 119. Additionally, the failure to meet its obligations under the payment bond
19 as set forth above is also a separate and independent breach of Berkshire Hathaway's
20 duty of good faith and fair dealing.

21 120. These breaches of the implied covenant of good faith and fair dealing
22 under the contracts has caused and will continue to cause damages to SiFi Networks
23 Fullerton.

24 121. SiFi Networks Fullerton seeks all damages incurred, expected to be
25 incurred, or recoverable under applicable law in connection with Berkshire
26 Hathaway's breach of its obligations under the implied covenant of good faith and
27 fair dealing. This includes, but is not limited to, all allowable direct, incidental, and
28

1 other damages (which may include special, consequential, or indirect damages), as
2 determined by the trier of fact.

3 122. These damages include “additional legal, design professional and delay
4 costs resulting from the Contractor’s Default, and resulting from the actions or failure
5 to act of the Surety under Section 5” of the performance bond, “reasonable attorney’s
6 fees the Claimant incurs” under Section 7.3 of the payment bond, and costs owed to
7 SiFi Networks Fullerton pursuant to Federal Rule of Civil Procedure 54(d). **Ex. 1**,
8 Performance Bond § 7.2; **Ex. 2**, Performance Bond § 7.3.

9 123. Pursuant to Section 7.3 of the performance bond, as well as Section 11
10 of the Work Order, liquidated damages are also owed to SiFi Networks Fullerton by
11 Berkshire Hathaway.

12 **CONDITIONS PRECEDENT**

13 124. All conditions precedent to SiFi Networks Fullerton’s claims for relief
14 have been performed or have occurred.

15 **DEMAND FOR JURY TRIAL**

16 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a jury
17 trial as to all issues triable by a jury.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, SiFi Networks Fullerton prays that this Court enter judgment
20 in its favor and against Berkshire Hathaway as follows:

21 1. Declare that, pursuant to Section 5 of the performance bond, Berkshire
22 Hathaway is obligated to pay SiFi Networks Fullerton for any losses it incurs as a
23 result of damages suffered in excess of the contract price balance owing to Corbel at
24 the time of the default and termination;

25 2. Declare that, pursuant to Section 3 of the payment bond, Berkshire
26 Hathaway must tender a defense and, if applicable, indemnity to SiFi Networks
27 Fullerton of Trinity’s claims against SiFi Networks Fullerton;
28

1 3. Award damages to SiFi Networks Fullerton resulting from Berkshire
2 Hathaway's breaches of its obligations under the performance and payment bonds;

3 4. Award damages to SiFi Networks Fullerton resulting from Berkshire
4 Hathaway's breaches of its duty of good faith and fair dealing;

5 5. Award all damages and expenses in an amount to be determined by the
6 trier of fact;

7 6. Award reasonable attorneys' fees;

8 7. Award costs of Court;

9 8. Award pre-judgment and post-judgment interest as allowed by law; and

10 9. Award recovery of such other relief to which Plaintiff is entitled.
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1 Dated: August 4, 2023

JONES DAY

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